

NOTICE OF AMENDMENT

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

February 24, 1995

Mr. Stan Wingate
Vice President of Operations
Montana-Dakota Utilities Company
400 North Fourth Street
Bismarck, North Dakota 58501

CPF No. 35001M

Dear Mr. Wingate:

On November 3, 1994, representative of the Central Region, Office of Pipeline Safety (OPS), pursuant to Chapter 601 of 49 United States Code, conducted an inspection of the Montana-Dakota Utilities Company (MDU) Drug Testing Program at Bismarck, North Dakota.

As a result of the review of your written anti-drug plan, the requirements for which are set forth in section §199.7, the following inadequate procedures were noted:

1. §199.7 Anti-drug Plan.

§199.7 requires that the written anti-drug plan contain the methods and procedures for compliance with all the requirements set out in 49 C.F.R. Parts 199 and 40.

- a. MDU's anti-drug plan is deficient in that it does not give a definition of a "Covered Employee" as defined in Part §199.3.
- b. MDU's anti-drug plan gives the normal temperature range of an employee's urine specimen as (90.5E-99.8EF) and the variation from oral body temperature of 1.8EF from

the temperature of the specimen. The normal temperature range should be given as (32E-38EC/90E-100EF) and the variation should be 1EC/1.8EF, effective September 19, 1994.

- c. The address of MDU's laboratory that analyzes the specimens collected for drug testing is not listed as required by §199.7(a)(2).
- d. MDU's anti-drug plan does not have procedures for notifying employees of the coverage and provisions of the plan as required by §199.7(a)(4).
- e. MDU's anti-drug plan does not clearly cover MDU's requirement for addressing the refusal to take a drug test required by §199.9(a)(2).
- f. MDU's anti-drug plan needs to be revised to include the method used for selecting employees (random number table, computer-based random number, etc.), as specified in §199.9(11)(c).
- g. MDU's anti-drug plan needs to be revised to clarify that only drug testing laboratories certified by the Department of Health and Human Services under the DOT procedures be used, as specified in §199.13(a).
- h. The MRO's duties need to be expanded to include the requirement that the original specimen be reanalyzed to determine the accuracy of the reported test result, as specified in §199.15(c)(2)(iv).
- i. The MRO's duties need to be expanded to include the requirement of verifying the laboratory report and assessment are correct, as specified in §199.15(c)(2)(v).
- j. MDU's anti-drug plan needs to be revised to include a statement that MDU is responsible for insuring that contractors used by MDU are in compliance with the requirements of C.F.R. Part 199 & 40, as specified in §199.21. MDU is required to review and approve each contractors program for compliance.
- k. MDU's anti-drug plan requires that the age of the employee who had a positive test should be part of the 5 year record. §199.23(a)(2) does not require the age of the employee.

l. MDU's anti-drug plan does not address the procedures which prohibit the release of an individual's drug test results except as listed in §199.23(b).

m. MDU's anti-drug plan did not require a suspected altered specimen to be submitted to the laboratory

along with an additional specimen that was obtained under direct monitoring procedures, as provided in §40.25.

n. The anti-drug plan did not adequately address the quality assurance requirements (blind sampling). The plan needs to be revised to reflect all the requirements, as specified in §40.31(d)(2).

o. The anti-drug plan does not provide for the MRO's contact with an individual to be on a confidential basis. The plan also does not provide for the confidentiality of the designated management official contacting the individual, if it becomes necessary, as provided for in §40.33.

p. The anti-drug plan does not address the employee's status if after making all reasonable efforts, the designated management official is unable to contact the employee, as provided for in §40.33.

q. The MRO's duties specified in the anti-drug plan need to be expanded to include provisions for a test that is verified positive. The employee may present to the MRO information documenting that serious illness, injury, or other circumstances unavoidably prevented the employee from timely contacting the MRO. The MRO may reopen the verification allowing the employee to present information concerning a legitimate explanation for the confirmed positive test in accordance with §40.33(c)(6).

r. The MRO's duties should be expanded to disclose such information to the employer, a DOT agency or other Federal safety agency, or a physician responsible for determining the medical qualification of the employee under an applicable DOT agency regulation, as applicable, as specified in §40.33(i)(1).

s. The anti-drug plan did not provide for the employee's right to request in writing a copy of any records

relating to his or her drug test and any records relating to the results of any relevant certification, review, or revocation of certification proceedings, as specified in §40.37.

When it is found that an operator's procedures are inadequate, 49 C.F.R. §190.237 provides that the operator, after notice and opportunity for hearing may be required to amend its plans and procedures. This letter serves to provide you with notice of the inadequate procedures and the response options as prescribed under §190.237. The operator is allowed thirty (30) days after receipt of such notice to submit written comments or request an informal hearing. After considering the material presented, the Office of Pipeline Safety is required to notify the operator of the required amendment or withdraw the notice proposing the amendment. If you do not desire to contest the notice, please provide the revised procedures within sixty (60) days of receipt of this notice.

Sincerely,

Ivan A. Huntton
Director, Central Region
Office of Pipeline Safety